

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 256

August 21, 1964

FRANCHISE – EXEMPT CORPORATIONS – DELINQUENT CHARGES

Syllabus:

During the 1959 Legislative Session, section 23772 of the Bank and Corporation Tax Law was amended by Assembly Bill 489 to provide that--

Any organization exempt from taxes -- shall pay the minimum tax provided for by section 23153 for any year or years for which it fails to file, on or before the due date, the annual return required by this section (23772). The bill was filed with the Secretary of State on April 2, 1959, and since it contained an urgency clause was effective immediately.

1. If an exempt organization fails to file a timely information return, should the delinquency penalty provided for by section 25931 be imposed?

2. (a) If an exempt organization is required to pay the minimum tax should interest be imposed?

(b) if so, from what date?

1. There are at least two reasons why exempt organizations are subject only to the minimum tax for their failure to file a timely information return. First, in the absence of a specific provision no tax or penalties would be imposed if such exempt organization never filed a return. Therefore, such amounts as can be imposed upon such organizations must be authorized by specific provisions of the law. The only authorization for collecting tax from an exempt organization aside from the tax provided for by Article 2 of Chapter 4, is section 23772(f) as amended in 1959. This section as amended subjects exempt organizations which fail to file a timely information return to the minimum tax, which, itself is a penalty for their delinquency. Since one penalty has been imposed for a delinquent filing, in our opinion had the Legislature intended to impose additional penalties they would have made express provisions therefor.

An additional reason for concluding that the penalty provided for delinquent filing cannot be imposed is because the return required by section 23772 is not a return within the meaning of section 25931. Section 25931 refers to a penalty which is a percentage of the tax for failure to file return by certain periods. The return required under section 23772 is not one which provides for the computation of tax, nor is it meant to disclose the information furnished by a

tax return. It has been established by prior decisions that such returns are not tax returns which will start the statute of limitations and thereby prevent assessments within a given period of time after the filing thereof. John Danz et al., 18 TC, aff'd 231 Fed. 2d 673, cert. denied 352 U.S. 828. Since the filing of an information return is not a tax return within the meaning of section 25663, it follows that such return is not a delinquent return within the meaning of section 25931. Therefore, the failure to file such timely return does not subject an exempt organization to the penalties provided therein.

The final section of the bill (Sec. 3) contains an urgency measure which makes the bill go into immediate effect. In the absence of an applicable date either in the bill or in the Bank and Corporation Tax Law the amendments would become effective on the effective date of the bill which was April 2, 1959. Since the bill did not specifically provide an applicable date of the amendments, it is necessary to examine the Bank and Corporation Tax Law to find out whether any of its provisions specifically provide an applicable date.

Section 23058 of the Bank and Corporation Tax Law specifically provides an applicable date (if not otherwise specifically provided) of any law affecting changes in the computation of taxes. It provides that changes in the law shall be applied only in the computation of taxes for income years beginning after December 31 of the year preceding enactment. Since the amendments involve rates and refunds they are regarded as being within the term computation of taxes.

Unfortunately a conflict exists between the provisions of the bill regarding the minimum tax and the applicable date provided by section 23058, i.e., the bill uses the terms any year or years which would encompass 1959 whereas section 23058 uses the term income year beginning after December 31 of the year preceding enactment which means tax years beginning on and after January 1, 1960. Since the object of interpretation and construction of the amendments is to ascertain the meaning and intention of the legislature, it is necessary that antagonism between the amendments to be interpreted and the existing law be avoided.

The purpose intended by the legislature was to wipe the slate clean of all taxes and delinquencies thereon against exempt corporations for all years prior to 1959 and to impose the minimum tax on those who fail to comply with the requirements of a timely information return on and after January 1, 1959. If we read into section 23058 the term taxable year instead of income year, the legislative purpose would be accomplished and the audit problem would be alleviated.

On this basis every exempt organization on whom any tax or delinquency thereon has been imposed for any taxable year beginning prior to January 1, 1959, by virtue of its failure to file a timely information return, is cancelled or constitutes an overpayment subject to refund, depending on the particular

circumstances. In other words, every exempt corporation on whom any tax or delinquency has been imposed for taxable years beginning December 1, 1958 and prior are cancelled or refundable. This wipes the slate clean of all taxes accrued prior to January 1, 1959.

As to the portion of the bill imposing the minimum tax for any year or years for which it fails to file a timely information return, the tax would accrue on the first day of the taxable year beginning on or after January 1, 1959. This interpretation of the words "any year or years" would be consistent with the provisions of the current law since the taxes are only imposed for tax years. It could also be argued that the first year the exempt corporation is subject to tax constitutes both the first income and the first tax year, hence the minimum tax would accrue on the first day of such combination year.

2. (a) As to interest section 25901 provides that if the tax imposed by this part -- is not paid on or before the date prescribed for its payment, interest shall be assessed -- upon such unpaid amount at the rate of 6 percent per year from the date prescribed for its payment until it is paid.

(b) Section 23772 imposes the minimum tax if the information return is not filed on or before its due date. Therefore, until such date no tax is imposed and until such date the tax is not payable. For this reason interest can be imposed only from the due date of the information return, which is 4 months and 15 days after the close of an exempt organization's income year.